

February 7, 2006

M. Micah Kessler
Nistico & Crouch, P.C.
5151 San Felipe, Suite 900
Houston, Texas 77056

Dear Mr. Kessler:

This is in response to your correspondence to the Oregon Teacher Standards and Practices Commission dated December 30, 2005 regarding public school teachers receiving compensation from a private company to organize and chaperone students who participate in the company's trips. Your letter was forwarded to this office and was received on January 12, 2006.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 06S-001**

STATED FACTS: A company utilizes teachers to organize and market trips for students throughout the United States. The trips provide students with the opportunity to visit such places as New York or Washington, D.C. The education related events may include various festivals or band contests.

Teachers who sign a contract with the company are asked to present the company's services to the students at their schools, arrange details of the trips and act as chaperones.

In return for a commitment to use the company for any future trips, the teacher is offered the choice of \$500 or two airline tickets.

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

244.020(15) " 'Public official' means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services."

244.040 “**Code of ethics; prohibited actions; honoraria.** The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120:”

244.040(1)(a) “No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated.”

QUESTION: Would an Oregon public school teacher violate Government Standards and Practices law by entering into a contract with a private company to receive compensation for participating in the company's sponsorship of student educational trips?

OPINION: ORS 244.040(1)(a) prohibits a public official from using or attempting to use an official position or office to obtain financial gain or to avoid a financial detriment that would not otherwise be available but for the public official's holding the official position or office. The only exceptions are that the public official may accept financial gain in the form of official salary, honoraria, reimbursement of expenses or an unsolicited award for professional achievement. A public official is also prohibited from using an official position to obtain a financial gain for a relative or to aid the relative in avoiding a financial detriment.

Oregon public school teachers are defined as public officials in ORS 244.020(15). The provisions of ORS 244.040(1)(a) would apply to teachers in Oregon.

The stated facts describe a scenario wherein a company offers teachers an opportunity to accept either \$500 or two airline tickets in return for assisting the company in presenting the company's services to students at their schools, arrange details of the trips and act as chaperones. It appears that the opportunity for the teacher's financial gain would not be available to the teacher but for being a teacher. It further appears that the teacher's responsibilities under the agreement with the private company would require the use of paid time and resources of the public employer, enabling the teacher to avoid the financial detriments of doing related tasks on personal time with the use of personal resources. Accordingly, it appears that an Oregon teacher would violate

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Government Standards and Practices law by participating in this contractual arrangement with the private company.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS, COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON STANDARDS AND PRACTICES COMMISSION.

Please contact this office again if you would like this opinion submitted to the Government Standards and Practices Commission for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn
Executive Director

LPH/dc 06S-001